Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1977

No. 77-839

STACI SPEIDEL, a/k/a ROSEMARY ROJAS,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

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Petitioner,

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THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Staci Speidel, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Eighth Circuit Court of Appeals entered in the above-entitled case on September 8, 1977. The petition for rehearing was denied on October 5, 1977. The petitioner's affidavit showing extenuating circumstances for permission to

file the writ out of time is shown at page one of the Appendix of this petition.

OPINIONS BELOW

The September 8, 1977 opinion of the Court of Appeals, whose judgment herein sought to be reviewed is reported at 562 F. 2d 1129 (8th Cir. 1977) and is reprinted at page App. 1 of the Appendix to this petition. The prior opinion of the United States District Court, District of Nebraska, is reported as follows: 425 F. Supp. 1262 and printed on page App. 15 of the Appendix. The judgment denying rehearing was entered on October 5, 1977 and is printed on page App. 11 of the Appendix. The jurisdiction of this Court is invoked pursuant to 28 U. S. C., § 1254 (1).

QUESTIONS PRESENTED

The question presented is whether or not the Quit Claim Deeds allegedly transported in Interstate Commerce by the petitioner, Staci Speidel and her co-defendant in the lower court, Ervin Everett Wright, constitute Securities under the broad statutory definition of that term in 18 U. S. C. § 2311.

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation of 18 U. S. C. § 2311:

> "Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; *certificate of interest in property, tangible or intangible;* (our emphasis added) instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

and 18 U. S. C. § 2314:

> "Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited, . . ."

STATEMENT OF THE CASE

On November 11, 1976, petitioner Staci Speidel and her co-defendant, Ervin Everett Wright were indicted in the United States District Court for the District of Nebraska, charging they had transported or caused to be

transported in interstate commerce forged securities, i. e., two Quit Claim Deeds, in violation of 18 U. S. C. § 2314. The indictment alleged that on or about January 27, 1976, Speidel and Wright transported from Nebraska to Iowa two forged Quit Claim Deeds knowing the deeds to be forged or falsely made. On December 10, 1976, Wright filed a motion to dismiss the indictment, contending that Quit Claim Deeds were not securities within the meaning of 18 U. S. C. §§ 2311 or 2314. On January 19, 1977, District Judge Schatz dismissed the indictment as to defendant Wright, holding that a Quit Claim Deed is not a certificate of interest in property, tangible or intangible, as defined by 18 U. S. C. § 2311 because "the deed in question did not certify an interest in property as required by the statute but rather certified no interest in property" (425 F. Supp. 1264).

Thereafter, on January 25, 1977, the petitioner herein, Staci Speidel, moved for a dismissal of indictment, and in an order entered on January 26, 1977, the District Court, on the same basis as it had dismissed the indictment as to Wright granted the petitioner Staci Speidel's motion.

The Court of Appeals reversed the findings of the District Court 562 F. 2d 1129 (8th Cir. 1977) finding that the Quit Claim Deeds allegedly transported in interstate commerce by the defendants constituted securities, for the purposes of the statute, prohibiting the interstate transportation of stolen or forged securities.

REASONS FOR GRANTING THE WRIT

1. Novel interpretation of National Stolen Property Act.

This case presents a novel interpretation of a subsection of 18 U. S. C. § 2311 commonly known as the National Stolen Property Act. The phrase that is being interpreted is "Securities includes . . . certificate of interest in property, tangible or intangible; . . ." Under the facts of this case, the Court of Appeals for the Eighth Circuit, interpreted the phrase to include deeds. There are no prior opinions of any court, interpreting this phrase to include deeds of any sort, Quit Claim or Warranty.

We would further submit that, men of commerce and finance would not readily identify deeds as being instruments synonymous with securities. The legislative history of the National Stolen Property Act is not of help in determining the intended meaning of Congress for the phrase "certificate of interest in property, tangible or intangible". We submit, without hesitation, that if Congress had intended to include deeds within the definition of securities it would have said deeds and not the ambiguous phrase "certificate of interest in property, tangible or intangible".

2. Conflict between Eighth Circuit and Second Circuit over interpretation of the phrase "certificate of interest in property, tangible or intangible".

The interpretation of the phrase involved herein conflicts with the interpretation made by the Second Circuit in *U. S. v. Canton,* 470 F. 2d 861, 862 (2d Cir. 1972). That Court interpreted the instant phrase to mean " 'a certificate of interest' in property is a specific type of instrument issued to participants in joint ventures as evidence

of the extent of their participation." The government in that case was trying to have a motor vehicle registration fall within the ambit of the statute. The case at bar is not even as strong as that case.

3. Conflict with other cases in the Eighth Circuit.

In addition to the conflicts previously cited, we assert that the decision of the court in this case is also in conflict with another decided by the Eighth Circuit Court of Appeals, to-wit: *United States v. Freeman,* 473 F. 2d 7 (8th Cir. 1973). The principle that *Freeman* stands for is that criminal statutes must be strictly construed. The statute that was being construed was the same as in the instant case. The zealous government prosecutor in that case was trying to make the paper on which a forged check was written, a tool used in forging a security. The Court of Appeals for the Eighth Circuit refused to allow that proposition but is now apparently in conflict with that decision, by its decision in the case at bar.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted to review the judgment of the Eighth Circuit Court of Appeals in this case.

Respectfully submitted,

EPHRAIM L. MARKS
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900 Nebraska Savings Building
Omaha, Nebraska 68102
Telephone 422-0900
Attorney for Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of December, 1977, copies of the Petition for Writ of Certiorari of the petitioner, Staci Speidel, a/k/a Rosemary Rojas, were mailed to counsel for the United States of America at the following addresses: Mr. Daniel E. Wherry, Attorney Thomas D. Thalken at 215 North 17th Street, Omaha, Nebraska 68101, and to Ms. Patty Ellen Merkamp, U. S. Department of Justice, Criminal Division, Appellate Section, Washington, D. C. 20530, and also to counsel for the defendant Ervin Everett Wright, John Respelier at 6404 Maple, Omaha, Nebraska 68104.

EPHRAIM L. MARKS

APPENDIX

AFFIDAVIT

State of Nebraska, County of Douglas, ss.

TIMOTHY J. CUDDIGAN, being first duly sworn on oath, deposes and states that he is an attorney at law, licensed to practice in the State of Nebraska; that he is the attorney that represented the Petitioner herein, Staci Speidel, in the U. S. District Court for the District of Nebraska, and the Eighth Circuit Court of Appeals; that when he received the order of the Eighth Circuit Court of Appeals dated October 18, 1977 (Appendix page 12), to stay the mandate for 60 days, he was mistakenly under the impression that he had 60 days to file the Petition for Writ of Certiorari and for that reason this Petition is filed out of time.

.....

TIMOTHY J. CUDDIGAN

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1175

United States of America,

Appellant,

v.

Staci Speidel, a/k/a Rosemary Rojas,
and Ervin Everett Wright,

Appellees.

Appeal from the United States District Court
for the District of Nebraska

Submitted: June 16, 1977

Filed: September 8, 1977

Before GIBSON, Chief Judge, HEANEY and ROSS, Circuit Judges.

GIBSON, Chief Judge.

Under federal law, it is a criminal offense for an individual, with unlawful or fraudulent intent, to transport falsely made or forged securities in interstate commerce. 18 U. S. C. § 2314 (1970). The limited issue in this case is whether or not the quitclaim deeds allegedly transported in interstate commerce by defendants Staci Speidel and Ervin Wright constitute "securities" under the broad statutory definition of that term in 18 U. S. C. § 2311. The District Court concluded that quitclaim deeds are not securities and dismissed the indictment that charged defendants with violating 18 U. S. C. § 2314. *United States v. Wright,* 425 F. Supp. 1262 (D. Neb. 1977). The Government, pursuant to 18 U. S. C. § 3731, appealed. We reverse.

The definitional section, 18 U. S. C. § 2311, provides in pertinent part:

> "Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; *certificate of interest in property, tangible or intangible*; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known

as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing; (Emphasis added.)

We note at the outset that "securities" is defined to *include* the several categories of documents named. This is similar to the wording, also in § 2311, used to define "motor vehicle" and "tax stamp". By contrast, the same section defines some other types of property with the word *means*. Using the plain and ordinary meaning of these terms, it is apparent that the definition of securities is intended to be expansive. *Helvering v. Morgan's, Inc.*, 293 U. S. 121, 125 n. 1 (1934). The legislative history of this statute reinforces this construction.[1] During the course of enactment, the wording of the bill's definition of securities was changed from "means" to "includes". H. R. Rep. No. 1462, 73d Cong., 2d Sess. (1934; 78 Cong. Rec. 8136 (1934).

We also note, as did the District Court, that the definition of securities in this context is broader than that under the Securities and Exchange Act. 15 U. S. C. § 77b(1). Under that act, the words "certificate of interest in property, tangible or intangible", are omitted. The Government urges us to hold that this phrase, as it is used in § 2311, includes quitclaim deeds.

Despite clear indications that Congress intended a broad definition of securities in this context, Wright and

1 The definitions of "securities", using the word *includes*, and "money", using the word *means*, were added to present § 2311 as part of the same act. National Stolen Property Act, Pub. L. No. 73-246, 48 Stat. 794.

Speidel argue that "securities" should be limited to documents valuable in themselves. Obviously, a statute directed at the interstate transportation with fraudulent intent of forged documents assumes that they may be used as fraudulent representations or interest apparently represented that has value rather than the document itself.[2]

Speidel and Wright also contend that the definition includes only those documents normally considered securities by the commercial and financial community. They cite two cases dealing with the "evidence of indebtedness" part of the § 2311 definition: *United States v. Jones*, 450 F. 2d 523 (5th Cir. 1971), involving airline tickets and *Merrill v. United States*, 338 F. 2d 763 (5th Cir. 1964), involving oil company credit card sales invoices. By contrast, the present case involves quitclaim deeds, which are commonly used in commercial real estate transactions, including loans secured by real estate. We do not believe that Congress intended or the law requires the restrictive reading urged by defendants.[3]

While criminal statutes traditionally are construed strictly, the salutary purposes of preventing fraud and the

2 *Cf., United States v. Sparrow*, 470 F. 2d 885, 888-89, (10th Cir. 1972), *cert. denied*, 411 U. S. 936 (1973) (lost securities bonds which had no present intrinsic value but became valuable on happening of a contingency were securities under § 2311).

3 Speidel urges us to use the definition of "certificate of interest" in property stated in *United States v. Canton*, 470 F. 2d 861, 862 (2d Cir. 1972). *Canton* apparently defined the phrase "certificate of interest or participation in any profit-sharing agreement," etc., rather than "certificate of interest in property, tangible or intangible." The concrete issue there was whether a New York motor vehicle registration certificate fell within the ambit of the statute.

use of forged documents and instruments in perpetrating frauds are also entitled to consideration. As expressed in *U. S. v. Turley,* 352 U. S. 407 (1957), it is appropriate to consider the purpose of the act under review and to ascribe a meaning to its words consistent with the context in which they appear. The rule of strict construction of criminal statutes does not mean that every criminal statute should be given the narrowest possible meaning, in derogation of the legislative purpose.[4] Here, Congress has addressed the problem of the transportation and use of stolen or forged certificates and, without ambiguity, has used language expansively and broadly defining securities. The definition under review includes "certificates of interest in property, tangible or intangible." Are quitclaim deeds such certificates? We think so.

The deeds incorporated in the indictments of Speidel and Wright purport to quitclaim the grantors' interest in land in Pottawattomie County, Iowa. Under Iowa law a quitclaim is as effective to transfer title to realty as any other form of conveyance. *Swab v. Appanoose Country Club,* 203 N. W. 2d 318, 319 (Iowa, 1972). *See also* Iowa Code § 558.19 (1975).

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4 Strict construction of criminal statutes is based on the need to provide fair warning of what conduct is criminal and to insure that the legislature rather than the courts define criminal behavior. *Huddleston v. United States,* 415 U. S. 814, 831 (1974); *United States v. Bass,* 404 U. S. 336, 348 (1971). Certainly, no one should be surprised that the transportation with fraudulent intent of forged quitclaim deeds could be proscribed. The pervasive and broad-ranging definition of securities set forth in § 2311 demonstrates a Congressional intent to cover almost all forms and types of stolen or forged certificates representing intangible or tangible property interests.

A quitclaim deed is an express conveyance of whatever interest and title the grantor might have. It could be none or all of the title. Conventionally, quitclaim deeds are used to convey minor interests in land, to clear titles to land and occasionally to convey full title that is encumbered by liens and defects. Thus, while a quitclaim deed warrants no specific interest in property, it can hardly be said that it certifies no interest in property. On the whole, one offering a quitclaim deed may be viewed as certifying a conveyance of all of his interest in the property, whatever that interest might be. When a quitclaim deed is executed to clear title to property or to satisfy title examiners, it certainly is thought that the grantor possesses some type of interest, encumbrance, or cloud upon the title and that the quitclaim deed will convey the interest necessary to remove that cloud or defect.

Given the nature and use of quitclaim deeds in real estate transactions, we think it accurate to say that a quitclaim deed certifies the grantee as having the real estate interest previously owned by the grantor. Therefore, in our view, the District Court erred in concluding that "the deed in question does not certify an interest in property, as required by [§ 2311], but rather certifies no interest in certain property * * *." 425 F. Supp. at 1264.

The judgment of the District Court is reversed. The cause is remanded for further proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CR. 76-0-88

UNITED STATES OF AMERICA,

Plaintiff,

v.

STACI A. SPEIDEL, a/k/a Rosemary T. Rojas,

Defendant.

ORDER

This matter having come before the Court upon the motion of defendant Staci A. Speidel, a/k/a Rosemary T. Rojas, to dismiss the indictment for failure to state an offense and the Court having previously determined in a Memorandum Opinion filed January 19, 1977, that the instant indictment does not state an offense under 18 U. S. C. § 2314, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that plaintiff's motion is granted and the indictment dismissed for failure to state an offense.

BY THE COURT:

/s/ ALBERT G. SCHATZ

Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CR. 76-0-88

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERVIN EVERETT WRIGHT, ET AL.,

Defendants.

MEMORANDUM OPINION

The issue presented by defendant Ervin Everett Wright's motion to dismiss the indictment for failure to state a crime (Filing No. 7) is whether a quit claim deed is a "certificate of interest in property, tangible or intangible," within the definition of "security" contained in 18 U. S. C. § 2311.

All parties agree that there are no reported decisions construing the statute either to include or exclude quit claim deeds. We are thus confronted with the task of determining whether the statute is intended to include quit claim deeds within its scope. In so doing we must bear in mind the principles that criminal statutes are to be strictly construed, *United States v. Freeman,* 473 F. 2d 7 (8th Cir. 1973), and that the statute must be read in *pari materia.*

Title 18, United States Code, Section 2314, which prohibits *inter alia* interstate transportation of stolen or forged securities was enacted in 1934 as an extension of the Dyer Act. Section 2311 defines security as that term is used in Section 2314 to include:

> Any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any

> instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

It has been suggested that:

> There is nothing (in the legislative history of Section 2311) to indicate that Congress intended to have the list of specifically named instruments and documents construed in their broadest possible senses, rather all were intended to be "included" within the scope of the meaning of "security" in its usual financial or commercial sense.
>
> *United States v. Canton*, 470 F. 2d 861 (2d Cir. 1972).

It is worth noting that the term security in Section 2311 contains language which is broader than the comparable definition in the federal securities acts. Specifically the language at issue here (certificates of interest in property) is an addition beyond the definition contained in the securities acts. Thus it is reasonable to infer that Congress intended that the definition contained in Section 2311 extend beyond the strict commercial understanding of that term to include any instrument "which has value in itself, is capable of being negotiated, and hence is of value to a forger or a thief." *Beam v. United States*, 364 F. 2d 756 (6th Cir. 1966).

In *Merrill v. United States*, 338 F. 2d 763 (5th Cir. 1964), the Court observed:

> Each of the "securities" specified in Section 2311 consists of a single document which in itself is sufficient to establish a given right, relationship or property interest.

Each of the specific items in Section 2311 is a commercially distinct term within the realm of finance and commerce. Each term embraces a document indicating investment or ownership of property not in the possession of the holder of the document with the expectation of a return on the investment or reclamation of the property.

The question must ultimately be resolved by considering the effect of a quit claim deed. There is language in *People v. Jackson*, 24 Cal. App. 2d 182, 74 P. 2d 1085, to the effect that "the term securities in its ordinary meaning does not cover deeds to property." However, this language is dicta unsupported either by case law or analysis of the concepts involved. The case itself stands for the proposition that the intent of a deed conveying an interest in mineral deposits brings it within the statutory definition of security whch under Californa law includes a certificate of interest in an oil, gas or mining title or lease. However, the Court's statement suggests that deeds to real property are a unique type of document.

Under Nebraska law a quit claim deed:

> (I)s a conveyance of an interest or title of the grantor in and to the land described rather than of the land itself . . . . An ordinary quit claim deed does not purport to convey the real estate but only any present interest of the grantor therein and . . . there is no implication from such a deed that the grantor had or conveyed entire title to the real estate.
>
> *Smith v. Berberich*, 168 Neb. 142, 95 N. W. 2d 325 (1959).

A quit claim deed does not by its terms affirm that the grantor possesses any interest in the property conveyed. Rather the grantor merely releases or abandons

any claim to any interest in the property. *See* 26 C. J. S. Deeds, Section 8; 23 Am. Jur. 2d Deeds, Sections 291 and 292. Since the deed in question does not certify an interest *in* property, as required by the statute, but rather certifies *no* interest in certain property, the Court concludes that the quit claim deed herein is not within the definition of "security" as intended by the statute and for that reason the indictment must be dismissed.

Accordingly, a separate order of dismissal sustaining the motion of defendant Wright is entered this day.

BY THE COURT:

/s/ Albert G. Shatz

Judge, United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

77-1175

September Term, 1976

United States of America,

Appellant,

vs.

Staci A. Speidel, etc., et al.,

Appellees.

Appeal from the United States District Court
for the District of Nebraska

Petition of appellee for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

October 5, 1977

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1175

September Term, 1977

United States of America,

Appellant,

vs.

Staci A. Speidel, a/k/a Rosemary T. Rojas,
and Ervin Everett Wright,

Appellees.

Appeal from the United States District Court
for the District of Nebraska.

On motion of Appellee, Staci Speidel, it is now here ordered that the issuance of the mandate herein be, and the same is hereby, stayed for a period of sixty days from this date. If within that time there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari has been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

October 18, 1977